

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEW ENGLAND CENTRAL
RAILROAD, INC.,

Plaintiff,

-v.-

Civil Action No. 04-30235-MAP

SPRINGFIELD TERMINAL
RAILWAY COMPANY, et al.,

Defendants.

**DEFENDANTS' MOTION TO DISMISS
COUNTS V THROUGH X OF AMENDED COMPLAINT
AND TO REFER AMENDED COMPLAINT
TO THE SURFACE TRANSPORTATION BOARD**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Rule 7.1 of the Rules of this Court, the defendants hereby move to dismiss Counts V through X of the amended complaint [Docket No. 16] because such counts fail to state a claim on which relief can be granted. The defendants also move to refer this matter to the Surface Transportation Board under the primary jurisdiction doctrine. The basis for this motion is set forth fully in the accompanying memorandum of reasons.

Respectfully submitted,



Eric L. Hirschhorn
Winston & Strawn LLP
1400 L Street, NW
Washington DC 20005
202-371-5706

Robert B. Culliford
BBO #638468
Iron Horse Park
North Billerica MA 01862
978-663-1029

*Attorneys for Defendants Springfield
Terminal Railway Company and Boston
and Maine Corporation*

March 16, 2005.